U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 18236458

Date: SEP. 13, 2021

Appeal of Texas Service Center Decision

Form I-140, Immigrant Petition for Alien Worker (Advanced Degree, Exceptional Ability, National Interest Waiver)

The Petitioner, a business operations specialist, seeks second preference immigrant classification as an individual of exceptional ability in the sciences, arts or business, as well as a national interest waiver of the job offer requirement attached to this EB-2 classification. See Immigration and Nationality Act (the Act) section 203(b)(2), 8 U.S.C. § 1153(b)(2). After a petitioner has established eligibility for EB-2 classification, U.S. Citizenship and Immigration Services (USCIS) may, as matter of discretion, grant a national interest waiver if the petitioner demonstrates: (1) that the foreign national's proposed endeavor has both substantial merit and national importance; (2) that the foreign national is well positioned to advance the proposed endeavor; and (3) that, on balance, it would be beneficial to the United States to waive the requirements of a job offer and thus of a labor certification. Matter of Dhanasar, 26 I&N Dec. 884 (AAO 2016).

The Director of the Texas Service Center determined that the Petitioner qualifies for the underlying classification as an advanced degree professional, that her proposed endeavor has substantial merit, and that she is well positioned to advance it. Nevertheless, the Director denied the petition, concluding that the evidence did not establish that the proposed endeavor is of national importance or that a waiver of the requirement of a job offer, and thus a labor certification, would be in the national interest. Accordingly, the Director determined that the Petitioner had not established eligibility for a national interest waiver.

The matter is now before us on appeal. The Petitioner reasserts her eligibility, arguing that the Director did not properly weigh or consider all the evidence and erred in the decision.

In these proceedings, it is the Petitioner's burden to establish eligibility for the requested benefit. Section 291 of the Act, 8 U.S.C. § 1361. Upon de novo review, we will dismiss the appeal.

## I. LEGAL FRAMEWORK

To establish eligibility for a national interest waiver, a petitioner must first demonstrate qualification for the underlying EB-2 visa classification (emphasis added), as either an advanced degree professional or an individual of exceptional ability in the sciences, arts, or business. Because this

classification requires that the individual's services be sought by a U.S. employer, a separate showing is required to establish that a waiver of the job offer requirement is in the national interest.

Section 203(b) of the Act sets out this sequential framework:

> (2) Aliens who are members of the professions holding advanced degrees or aliens of exceptional ability. –
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> (A) In general. – Visas shall be made available . . . to qualified immigrants who are members of the professions holding advanced degrees or their equivalent or who because of their exceptional ability in the sciences, arts, or business, will substantially benefit prospectively the national economy, cultural or educational interests, or welfare of the United States, and whose services in the sciences, arts, professions, or business are sought by an employer in the United States.
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> (B) Waiver of job offer –
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> (i) National interest waiver. . . . [T]he Attorney General may, when the Attorney General deems it to be in the national interest, waive the requirements of subparagraph (A) that an alien's services in the sciences, arts, professions, or business be sought by an employer in the United States.

Section 101(a)(32) of the Act provides that "[t]he term 'profession' shall include but not be limited to architects, engineers, lawyers, physicians, surgeons, and teachers in elementary or secondary schools, colleges, academics, or seminaries."

The regulation at 8 C.F.R. § 204.5(k)(2) contains the following relevant definitions:

> Advanced degree means any United States academic or professional degree or a foreign equivalent degree above that of baccalaureate. A United States baccalaureate degree or a foreign equivalent degree followed by at least five years of progressive experience in the specialty shall be considered the equivalent of a master's degree. If a doctoral degree is customarily required by the specialty, the alien must have a United States doctorate or a foreign equivalent degree.
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> Exceptional ability in the sciences, arts, or business means a degree of expertise significantly above that ordinarily encountered in the sciences, arts, or business.
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> Profession means one of the occupations listed in section 101(a)(32) of the Act, as well as any occupation for which a United States baccalaureate degree or its foreign equivalent is the minimum requirement for entry in the occupation.

In addition, the regulation at 8 C.F.R. § 204.5(k)(3)(ii) sets forth the specific evidentiary requirements for demonstrating eligibility as an individual of exceptional ability. A petitioner must submit

documentation that satisfies at least three of the six categories of evidence listed at 8 C.F.R. § 204.5(k)(3)(ii).

Furthermore, while neither the statute nor the pertinent regulations define the term "national interest," we set forth a framework for adjudicating national interest waiver petitions in the precedent decision Matter of Dhanasar, 26 I&N Dec. 884 (AAO 2016). In announcing this new framework, we vacated our prior precedent decision, Matter of New York State Department of Transportation, 22 I&N Dec. 215 (Act. Assoc. Comm'r 1998). Dhanasar states that after a petitioner has established eligibility for EB-2 classification, U.S. Citizenship and Immigration Services (USCIS) may grant a national interest waiver as matter of discretion. See also Poursina v. USCIS, 936 F.3d 868, 2019 WL 4051593 (9th Cir. 2019) (finding USCIS' decision to grant or deny a national interest waiver to be discretionary in nature). As a matter of discretion, the national interest waiver may be granted if the petitioner demonstrates: (1) that the foreign national's proposed endeavor has both substantial merit and national importance; (2) that the foreign national is well positioned to advance the proposed endeavor; and (3) that, on balance, it would be beneficial to the United States to waive the requirements of a job offer and thus of a labor certification. See Dhanasar, 26 I&N Dec. at 888-91, for elaboration on these three prongs.

## II. ANALYSIS

The Director determined that the Petitioner is a member of the professions holding an advanced degree. However, in our de novo review, we question the evidence concerning the Petitioner's foreign education and post-baccalaureate work experience. Therefore, we withdraw the Director's finding and conclude that for the following reasons, the Petitioner does not qualify for the underlying classification.

### A. Member of the Professions Holding an Advanced Degree

In order to show that a petitioner holds a qualifying advanced degree, the petition must be accompanied by "[a]n official academic record showing that the [individual] has a United States advanced degree or a foreign equivalent degree." 8 C.F.R. § 204.5(k)(3)(i)(A). Alternatively, a petitioner may present "[a]n official academic record showing that the [individual] has a United States baccalaureate degree or a foreign equivalent degree, and evidence in the form of letters from current or former employer(s) showing that the [individual] has at least five years of progressive post-baccalaureate experience in the specialty." 8 C.F.R. § 204.5(k)(3)(i)(B).

As stated, we withdraw the Director's determination concerning the Petitioner's academic record and post-baccalaureate experience. We conclude that the evidence is insufficient to establish: (1) the U.S. equivalency of the Petitioner's foreign education; and (2) that the Petitioner possessed five years of post-baccalaureate experience at the time of filing.

Regarding her academic records, the Petitioner claims to hold both a bachelor's and a master's degree in business administration from the University [redacted] in Brazil, where she studied from 2010 to 2016. In the initial filing, the Petitioner submitted a USA Evaluations advisory opinion from [redacted], a professor at [redacted] University. Although [redacted] provided his opinion concerning the Petitioner's national interest waiver eligibility under the Dhanasar framework, he did not offer any analysis of the U.S. equivalency of the Petitioner's foreign academic education. For

instance, the evaluation did not discuss the Petitioner's years of study, grades, or credit hours, nor did [redacted] demonstrate knowledge of Brazilian or U.S. academic systems or the particular university the Petitioner attended. Accordingly, this opinion letter is not probative of the U.S. equivalency of the Petitioner's education.

In response to the Director's request for evidence (RFE), the Petitioner provided a one-page addition to the advisory opinion, which was signed by Senior Evaluator, [redacted] of [redacted] The evaluator provided generalized information on how [redacted] prepares evaluation reports, in addition to the assumptions they make that higher education in the United States involves "30 to 34 semester hours" per academic year and that a grade point average (GPA) is calculated by dividing the total grade points by the total number of credits. This one-page addition does not acknowledge or analyze the Petitioner's foreign education and therefore it is not probative of how her education relates to a U.S. education. We may, in our discretion, use an evaluation of a person's foreign education as an advisory opinion. Matter of Sea, Inc., 19 I&N Dec. 817, 820 (Comm'r 1988). However, where an opinion is not in accord with other information or is in any way questionable, we may discount or give less weight to that evaluation. Id. Here, the advisory opinion and generalized evaluation information do not offer any analysis of the Petitioner's foreign academic record. Therefore, the Petitioner has not met her burden to persuasively establish the U.S. academic equivalency of her foreign education in accordance with 8 C.F.R. § 204.5(k)(3)(i)(A).

We reviewed the AACRAO EDGE database to determine whether the Petitioner's foreign education is comparable to any U.S. degree. The AACRAO EDGE database is a reliable resource concerning the U.S. equivalencies of foreign academic records. For more information, visit https://www.aacrao.org/edge (last visited Sep. 13, 2021). The database indicated that the Petitioner's four-year degree in business administration is equivalent to a U.S. bachelor's degree. While the Petitioner's claimed post-graduate certificate of "Curso de MBA em Gestao Estrategia de Pessoas," does appear to be graduate level education, neither the AACRAO EDGE database nor the evidence of record persuasively establishes that this education is equivalent to a U.S. master's degree.

In addition, the Petitioner has not established that she possessed five years of post-baccalaureate experience at the time of filing. The record indicates that the Petitioner concluded her foreign bachelor's degree courses in September 2014 and received her degree certificate in January 2015. The Petitioner filed the instant Form I-140 in August 2018. Accordingly, even if the Petitioner had acquired qualifying post-baccalaureate work experience beginning immediately after the award of her degree, she would still not have acquired the requisite five years of post-baccalaureate experience at the time she filed her petition. USCIS regulations affirmatively require a petitioner to establish eligibility for the benefit they are seeking at the time the petition is filed and they must continue to be eligible through adjudication of the benefit. See 8 C.F.R. § 103.2(b)(1). Therefore, even if we were to accept the U.S. equivalency of the Petitioner's bachelor's degree based upon the AACRAO EDGE database information, this would still be insufficient to establish that the Petitioner is a member of the professions holding an advanced degree.

Although the Petitioner provided an additional document which evidences some graduate education in logistic technology, we cannot ascertain from the record whether the Petitioner completed this course of study. For example, she did not provide her foreign diploma to evidence completion of a particular degree and the academic records contain no dates for the course conclusion, graduation, or

diploma issuance. As with her other academic records, the Petitioner did not provide evidence of the U.S. equivalency of this education. Therefore, we cannot conclude that her logistic technology education represents the equivalent of a U.S. advanced degree.

For the foregoing reasons, the Petitioner has not established that she is a member of the professions holding an advanced degree.

B. Evidentiary Criteria for Exceptional Ability

The Petitioner submitted evidence of her qualifications as an individual of exceptional ability. However, the record does not establish that she meets at least three of the six required criteria. Therefore, she has not established that she qualifies as an individual of exceptional ability.

> An official academic record showing that the alien has a degree, diploma, certificate, or similar award from a college, university, school, or other institution of learning relating to the area of exceptional ability. 8 C.F.R. § 204.5(k)(3)(ii)(A)

The Petitioner submitted an official academic record evidencing a foreign bachelor's and graduate level education. While this alone is insufficient to establish that she is a member of the professions holding an advanced degree, it is sufficient to establish that she meets this criterion.

> Evidence in the form of letter(s) from current or former employer(s) showing that the alien has at least ten years of full-time experience in the occupation for which he or she is being sought. 8 C.F.R. § 204.5(k)(3)(ii)(B)

The Petitioner claimed to have ten years of full-time experience in the field of business administration and operations. To arrive at ten years of experience, the Petitioner included work experience beginning in 2009, prior to obtaining her business administration degree. Initially, we note that the Petitioner filed her Form I-140 in August 2018. Therefore, even if we conclude that the evidence is sufficient to establish that all her work experience was both full-time and in the business administration/operations occupation, the duration of such experience would nevertheless amount to less than ten years at the time she filed the petition.

Although she stated that she worked as a call and sales representative at [redacted], the record does not include a letter from this employer persuasively establishing the dates of her employment or that the position was full-time. In addition, the record lacks sufficient information with which to conclude that this work experience was in the occupation of business administration/operations or that the call and sales representative position required specific business administration/operations qualifications. Therefore, we conclude that the evidence concerning this work experience does not meet the requirements of 8 C.F.R. § 204.5(k)(3)(ii)(B).

The Petitioner provided other work experience evidence, including a letter from the City Hall of [redacted] which states that the Petitioner worked full-time as an administrative agent from March 2010 to October 2017. Therefore, part of this experience was gained prior to the Petitioner's attainment of a business administration degree. Once again, if the Petitioner was hired and began work prior to obtaining any business administration education, we question how this would establish that this portion of her

experience meets the requirement that it be "in the occupation." Concurrently with this work experience, the Petitioner also claimed to work at the [redacted] Airport in various positions from August 2010 to January 2016. The employer letter states that the Petitioner began her work at the airport in a youth apprentice program. While valuable, an internship for youth does not suggest that she fully performed in the occupation and therefore we conclude that her experience in the apprentice program does not persuasively meet the requirement of being "in the occupation." Taking her City Hall and airport experience together, the evidence indicates that the Petitioner worked two full-time, forty-hour per week jobs while also pursuing her bachelor's degree program followed by a graduate program. Although not impossible to accomplish such a feat, we question the accuracy and credibility of the Petitioner's assertions without further corroborating details.

While we acknowledge the employer letters from the Petitioner's various positions in the United States, the experience in these positions appears to have been gained after the filing of the petition. Therefore, even if all her U.S. experience qualifies as full-time and in the business administration/operations occupation, the evidence would still be insufficient to establish the requisite ten years of experience acquired prior to the time of filing.

For the foregoing reasons, the evidence does not support a finding that the Petitioner meets this criterion.

> A license to practice the profession or certification for a particular profession or occupation. 8 C.F.R. § 204.5(k)(3)(ii)(C)

The Petitioner did not submit evidence indicating that a license is required to practice the profession or occupation of business operations specialist either in Brazil or in the United States. We acknowledge a document issued in 2014 by the "Federal Council of Administration Regional Business Administration Council," which granted the Petitioner the "[p]rofessional identity" of administrator. The Petitioner did not provide evidence of the qualifications required to obtain this document or what the professional identity of administrator confers upon her. Therefore, the Petitioner has not established that this document is a license to practice the profession. In addition, the document itself states that it was valid only through September 2016, while an accompanying letter states that it was valid through December 2018. Although possibly valid at the time the Petitioner filed her Form I-140, it does not appear as though the document remained valid through to the adjudication of her petition as required by 8 C.F.R. § 103.2(b)(1).

Similarly, she has not provided evidence to establish that a certification is required to practice the profession or occupation of business operations specialist either in Brazil or in the United States. Although, the Petitioner submitted numerous certificates, these appear to have been issued upon completion of various trainings. Certificates of training or participation are not the same as a certification to practice a profession. To illustrate by example, the Petitioner's training completion certificates for aviation security or fire safety appear both unrelated and unnecessary to participate in the business administration/operations occupation. Therefore, these certificates do not meet the requirement of 8 C.F.R. § 204.5(k)(3)(ii)(C).

In her RFE response, the Petitioner provided evidence that she acquired a customer representative license from the Florida Department of Financial Services. The Petitioner has not explained what this license enables her to do or what qualifications were required for its issuance. As stated previously, the Petitioner has not submitted evidence indicating that a license is required to practice the profession or occupation of

business operations specialist. In addition, this customer representative license was issued after the petition was filed and therefore does not establish the Petitioner's eligibility under this criterion at the time of filing.

Accordingly, the evidence does not support a finding that the Petitioner meets this criterion.

> Evidence that the alien has commanded a salary, or other remuneration for services, which demonstrates exceptional ability. 8 C.F.R. § 204.5(k)(3)(ii)(D)

The Petitioner did not offer evidence for our consideration under this criterion. Therefore, she has not established eligibility under this criterion.

> Evidence of membership in professional associations. 8 C.F.R. § 204.5(k)(3)(ii)(E)

The Petitioner submitted the document issued by the "Federal Council of Administration Regional Business Administration Council" for our consideration under this criterion. While the document does appear more closely related to a membership than a license, we nevertheless have little information concerning the qualifications required for its issuance. Accordingly, we conclude that it does not persuasively evidence a membership in a professional association. As previously explained, even if valid at the time of filing, the document did not remain valid through the adjudication of the benefit requested and is therefore not evidence of a current membership.

In her RFE response, the Petitioner submitted documentation related to membership in an internal commission for accident prevention (CIPA). The documents indicate that any type of public or private institution may admit employees into this organization and that the employees must be elected or appointed by other employees within their workplace. The documents do not suggest that professional qualifications are required to be elected as a member. In addition, CIPA appears to be an organization focused on workplace and environmental safety and not a professional association related to the Petitioner's field of endeavor.

Accordingly, the evidence does not support a finding that the Petitioner meets this criterion.

> Evidence of recognition for achievements and significant contributions to the industry or field by peers, governmental entities, or professional or business organizations. 8 C.F.R. § 204.5(k)(3)(ii)(F)

Returning to [redacted]'s advisory opinion, we observe that the opinion contains many conclusory assertions made without sufficient corroborating evidence to support them. [redacted] largely restated the Petitioner's résumé in paragraph form but added conclusions such as that the Petitioner held "leading and critical roles for the companies in which she has worked," that she has "sophisticated skills" and "demonstrated expertise," and has an "impressive record of specific achievements." [redacted] did not offer sufficient detail or specific examples to substantiate how he arrived at his conclusions but instead offered only a generalized overview of the Petitioner's education and work experience. For instance, [redacted] appeared to summarily conclude that simply because the Petitioner has been employed and gained experience, that she necessarily has "demonstrated expertise." Even if we overlooked the conclusory nature of [redacted]'s statements, his letter

would still not establish how the Petitioner's accomplishments have any bearing on the field of business administration, as opposed to being limited to the employers and clients she served. As a matter of discretion, we may use opinion statements submitted by the Petitioner as advisory. *Matter of Caron Int'l,* Inc., 19 I&N Dec. 791, 795 (Comm'r 1988). However, we will reject an opinion or give it less weight if it is not in accord with other information in the record or if it is in any way questionable. Id. Here, [redacted] pledges that the Petitioner has made contributions to the business administration industry, but he does not provide sufficient detail or specific examples to substantiate such claims. Accordingly, his advisory opinion is of little probative value in this matter.

We reviewed the numerous recommendation letters submitted by former colleagues and professors, however none of the authors identify how the Petitioner's accomplishments within academia or her workplace had any bearing on the business administration industry. Although the authors express high opinions of the Petitioner's abilities, education, personal qualities, and past experience, the accomplishments they describe do not appear to have impacted her field of endeavor. For instance, the letter from [redacted] references the Petitioner's track record of achievements but does not explain how any of them extended beyond the classroom, whether as a student or a part-time professor. Similarly, [redacted] provided examples of the Petitioner's impressive achievements in high school science, but she offered little information concerning how this constitutes recognition for achievements and significant contributions to the industry of business administration. To illustrate further, the letter from [redacted] notes that the Petitioner brings fundamental contributions to any team or institution she works for, which suggests that the Petitioner's contributions have not reached the industry as a whole. Although he stated that the Petitioner created mechanisms and optimized internal processes, he did not provide corroborating details to support such claims, nor does the information he provided support a finding that the Petitioner's contributions were known outside of her own workplace.

Generalized conclusory statements that do not identify a specific impact in the field have little probative value. See *1756, Inc. v. U.S. Att'y Gen.*, 745 F. Supp. 9, 15 (D.D.C. 1990) (holding that an agency need not credit conclusory assertions in immigration benefits adjudications). The submission of reference letters supporting the petition is not presumptive evidence of eligibility; USCIS may evaluate the content of those letters so as to determine whether they support the petitioner's eligibility. Id. See also Matter of V-K-, 24 I&N Dec. 500, n.2 (BIA 2008) (noting that expert opinion testimony does not purport to be evidence as to "fact").

Finally, we acknowledge the Petitioner's training completion certificates, photos, and evidence of volunteer work; however, the Petitioner has not explained how this evidence represents recognition for achievements and significant contributions to the business administration industry.

For the foregoing reasons, we conclude that the evidence does not establish that the Petitioner meets this criterion.

Summary of Exceptional Ability Determination

The record does not support a finding that the Petitioner meets at least three of the six regulatory criteria for exceptional ability at 8 C.F.R. § 204.5(k)(3)(ii). Rather, we conclude that the evidence supports a finding of eligibility under only one criterion. Therefore, the Petitioner has not established her eligibility

as an individual of exceptional ability under section 203(b)(2)(A) of the Act. As the Petitioner has satisfied only one criterion, a final merits determination is not required.

C. National Interest Waiver

As previously outlined, the Petitioner must show that she is either an advanced degree professional or possesses exceptional ability before we reach the question of the national interest waiver. The Petitioner has not established eligibility for the underlying immigrant classification and therefore, the issue of the national interest waiver is moot. The waiver is available only to foreign workers who otherwise qualify for classification under section 203(b)(2)(A) of the Act. The documentation in the record does not establish eligibility for the underlying EB-2 classification; therefore, further analysis of eligibility under the framework outlined in Dhanasar would serve no meaningful purpose.

Because the identified reasons for dismissal are dispositive of the Petitioner's appeal, we decline to reach and hereby reserve the arguments regarding eligibility under the Dhanasar framework. See INS v. Bagamasbad, 429 U.S. 24, 25 (1976) ("courts and agencies are not required to make findings on issues the decision of which is unnecessary to the results they reach"); see also Matter of L-A-C-, 26 I&N Dec. 516, 526 n.7 (BIA 2015) (declining to reach alternative issues on appeal where an applicant is otherwise ineligible).

## III. CONCLUSION

The Petitioner has not demonstrated that she qualifies as a member of the professions holding an advanced degree or as an individual of exceptional ability under section 203(b)(2)(A) of the Act. Accordingly, the Petitioner has not established eligibility for the immigration benefit sought. Section 291 of the Act, 8 U.S.C. § 1361; Matter of Otiende, 26 I&N Dec. 127, 128 (BIA 2013).

ORDER: The appeal is dismissed.